

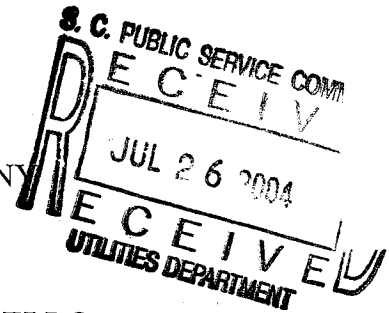
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STATE OF SOUTH CAROLINA  
BEFORE THE SOUTH CAROLINA PUBLIC SERVICE COMMISSION

DOCKET NO. 2004-90-W/S

Application of Total Environmental )  
Solutions, Inc. ("TESI") for approval )  
of adjustment in rates )  
\_\_\_\_\_ )

PREFILED TESTIMONY



**TESTIMONY OF MICHAEL J. MONTEBELLO**

The Department of Health and Environmental Control ("DHEC") submits the following testimony pursuant to 26 S.C. Code Ann. Reg. 103-869(c). The witness named above will be present at the hearing of this matter and, if placed under oath and asked the following questions, would answer as follows:

1. Please state your name and where you work.  
A: Michael Joseph Montebello. I work for the South Carolina Department of Health and Environmental Control located at 2600 Bull Street, Columbia, South Carolina 29201. I am Manager of the Domestic Wastewater Permitting Section within the Water Facilities Permitting Division. I have been with DHEC's Bureau of Water for approximately twenty-four years. I have been manager of the section since 1988.
2. What is your educational background?  
A: I received a B. S. degree in Engineering from the University of South Carolina in 1974.
3. What are your job duties and responsibilities with DHEC?  
A: My duties include supervising DHEC's Domestic Wastewater Permitting Section, which is charged with issuing NPDES discharge permits and construction permits to municipal and private entities in accordance with the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq., and the Pollution Control Act, S.C. Code Ann. §§ 48-1-10 et seq. My specific responsibilities include training and supervising a staff of seven employees; providing professional and technical assistance to the agency staff, to regulated facilities, and to the general public; and drafting wastewater system construction permits and wastewater discharge permits.

4. Does TEST's Foxwood Hills Subdivision wastewater treatment facility operate under a permit issued by DHEC?  
A: Yes, DHEC issued the most recent National Pollutant Discharge Elimination System (NPDES) Permit SC0022357 to Total Environmental Solutions Inc., on December 30, 2003, authorizing the discharge of treated wastewater to Lake Hartwell in accordance with the effluent limitations, monitoring requirements and other conditions set forth therein. A copy of this NPDES permit is attached as DHEC's prefiled Exhibit 5.
5. Explain what this permit requires.  
A: The permit requires, among other things, that discharges of treated wastewater from Total Environmental Solutions/Foxwood Hills Subdivision sewer system meet the permitted effluent limitations for Biochemical Oxygen Demand, Total Suspended Solids, Ammonia-Nitrogen, Fecal Coliform, Total Residual Chlorine, Phosphorus, Dissolved Oxygen and pH specified in the permit. The permit also requires Total Environmental Solutions to take effluent samples, submit the testing results to DHEC, and meet other testing or reporting conditions as specified in the permit. Under the terms of the permit, the wastewater treatment system must be operated by a licensed Operator of Grade B or above. The permit is non-transferable, except with prior approval of the Department. The permit includes a Schedule of Compliance which requires the permittee to meet final limits on or before July 1, 2006 (for the existing 0.1 MGD wastewater treatment facility).
6. TEST's current application for a rate adjustment discusses an escrow agreement which was created between Foxwood Corporation, NACO, Mountain Bay Utility Company and DHEC in 1980. What was your first involvement with the Escrow Agreement?  
A: My first involvement in the Escrow Agreement was based on a meeting held at DHEC on September 28, 1994. The meeting included representatives from DHEC, Lonnie Mathis of B.P. Barber & Associates, Inc. and David Kerr of Mountain Bay Estates Utility Company, Inc. At that time, the Foxwood Hills Subdivision had on record a construction permitted flow allocated of 1,289,900 gallons per day and a wastewater NPDES discharge permit of 100,000 gallons per day. We met with the consulting engineer and the Utility Company at their request to discuss the means to rectify the discrepancy between the permitted flow and the actual NPDES discharge capacity. The need for expanding the wastewater treatment plant in phases was discussed along with using funds from the escrow account.
7. What DHEC actions were taken related to the wastewater treatment facility and the capacity issues in late 1994 and early 1995?

- A. As a result of the meeting in September 1994, and a written request dated October 31, 2004 from Lonnie Mathis of B.P.Barber & Associates, Inc. on behalf of Mountain Bay Estates, the Department requested a wasteload allocation for an increase in the permitted capacity from 100,000 gpd to 1,400,000 gpd in increments. The phases proposed were 200,000 gpd, 400,000 gpd, 800,000 gpd and 1,400,000 gpd. The discharge was proposed to remain at its current location in Lake Hartwell. In January 1995, the Department provided the information necessary to prepare a Preliminary Engineering Report (PER) to Mr. Mathis, who was Mountain Bay Estates' engineering consultant. On February 22, 1995, Mr. Mathis submitted a PER for the phased expansion of the existing treatment facility from 100,000 gpd to 1,400,000 gpd (as described previously). On May 10, 1995, the Department drafted a modification of the existing NPDES permit (SC0022357) to allow for a phased expansion of the facility to 1,400,000 gpd. On April 11, 1995, the Department approved the PER for the phased expansion of the wastewater treatment facility. On August 1, 1995, the Department modified the NPDES permit to allow the phased expansion of the wastewater treatment facility.
8. What other actions were requested by the parties included in the Escrow Agreement?
- A. On November 9, 1994, Kenneth Hendrycy, who was Vice President, National American Corporation (NACO), requested that NACO and Foxwood Corporation be removed as parties to the Escrow Agreement. They requested that Mountain Bay Utility Co., Inc. be solely liable for the operation of the water and sewer system. On March 24, 1995, the Escrow Agreement was modified (see DHEC's prefiled Exhibit 6). The modified Agreement clearly stated that Mountain Bay Estates Company was obligated to use any funds (including interest) that it received from the escrow account for "activities related to future expansions (included in the PER for the facility) of the Foxwood Subdivision Wastewater Treatment Facility."
9. Were the funds from the Escrow Account released and for what identified purpose?
- A. On August 28, 1995, the escrow account funds were released to Mountain Bay Estates Utility Company at the company's request for the purpose of expanding the treatment system. DHEC approved the release of the funds based upon the company's submission of an NPDES application to expand the treatment system and based upon the company's submittal of a preliminary engineering report outlining the proposed expansion. Additionally, DHEC's decision was based upon the company's written submittals in which it represented to DHEC that it planned to use the escrow funds for the purposes of preparing engineering plans and specifications for the wastewater treatment facility and to complete construction of the expansion of the facility capacity to 200,000 gpd in accordance with the DHEC approved PER. Relying upon the company's representations, DHEC had

every expectation, at the time of the release of the funds, that the funds would be used for the expansion of the wastewater treatment facility.

10. Did the permittee Mountain Bay Estates Utility Company use the funds as they agreed in the amended Escrow Account?
  - A. No, Mountain Bay Estates Utility Company did not use the funds for the wastewater treatment plant expansion. DHEC relied on the company's representations that it was going to use the funds for expansion and also upon the fair expectation that the company would carry out its obligations under the escrow agreement in good faith. The Department was misled regarding the distribution of these funds.
11. Once the funds were released, was Mountain Bay Estates Utility Company under any sort of regulatory deadlines required by law to complete the expansion?
  - A. No, there was no specific timeline established by statute, regulation or otherwise which mandated that the company initiate and complete construction of the expansion of the treatment facility by any particular date after the escrow funds had been released. Therefore, after the release of the escrow funds, DHEC's oversight authority regarding when the company would begin and complete construction of the expansion was limited to a great extent.
12. Do you know where the monies collected from the Escrow Account were spent?
  - A. No. The expansion was never completed. Mountain Bay Estates Utility Company failed to comply with the terms of the escrow agreement. My understanding is that in 1999, the parent company of Mountain Bay Estates, Johnson Properties, Inc., filed for bankruptcy, and the company and its subsidiary were insolvent at that point.
13. Has there been any changes to the NPDES permit for the Foxwood Subdivision since March 2001, that would have an impact on the wastewater treatment plant design?
  - A. Yes, On December 30, 2003, the Department reissued the NPDES permit for the Foxwood Hills Subdivision. The NPDES permit limitations were changed to reflect the most recent water quality standards. The most significant change was the addition of effluent phosphorus limitations at all phased flows.
14. Does this conclude your prefiled testimony?
  - A: Yes.